

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>2/27/2023</u>

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SMITHLINE FAMILY TRUST II, AS	:	
ASSIGNEE OF PURITAN PARTNERS LLC,	:	
	:	
Plaintiff,	:	
	:	22-CV-10858 (VEC)
-against-	:	
	:	<u>ORDER</u>
FOXO TECHNOLOGIES, INC., A DELAWARE	:	
CORPORATION, AND JON SABES,	:	
	:	
Defendants.	X	

VALERIE CAPRONI, United States District Judge:

WHEREAS on December 23, 2022, Defendants removed this action from New York Supreme Court, *see* Dkt. 1;

WHEREAS on December 30, 2022, Defendant FOXO Technologies Inc. (“FOXO”) filed an answer to Plaintiff’s complaint, *see* Dkt. 6;

WHEREAS on January 12, 2023, Plaintiff and Defendant Jon Sabes (“Sabes”) agreed to extend the deadline for Sabes to respond to the complaint, *see* Dkt. 11;

WHEREAS on February 1, 2023, Sabes filed a motion to dismiss, Dkt. 13;

WHEREAS on February 22, 2023, Plaintiff filed an amended complaint, Dkt. 23;

WHEREAS pursuant to Rule 15(a)(1), a plaintiff may amend the complaint once as a matter of course within 21 days of serving it; or, under Rule 15(a)(1)(B), 21 days after service of responsive pleading or a Rule 12 motion to dismiss, whichever is earlier, *see* Fed. R. Civ. P. 15(a)(1)(A)–(B); and

WHEREAS in a case involving multiple defendants, “the 21-day period embodied in Rule 15 for amendments ‘as of right’ should be applied to each defendant separately,” *see Bank of Am., N.A. v. TemPay LLC*, 2020 WL 1933605, at *3 (W.D.N.Y. Apr. 21, 2020).

IT IS HEREBY ORDERED that Sabes’s motion to dismiss is DENIED as moot.


IT IS FURTHER ORDERED that, not later than **March 15, 2023**, Defendant Sabes must either file an answer to the Amended Complaint or move to dismiss the Amended Complaint.

IT IS FURTHER ORDERED that Plaintiff cannot, absent consent or leave of court, amend the complaint as a matter of right with respect to the allegations against FOXO, as more than 21 days have passed since FOXO answered the initial complaint.

The Clerk of Court is respectfully directed to terminate the open motion at Dkt. 13.

SO ORDERED.

Date: February 27, 2023
New York, New York


VALERIE CAPRONI
United States District Judge